IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8418 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHARAD ANAND SHAHU

Versus

COMMISSIONER OF POLICE

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Appearance:

MR UM SHASTRI for Petitioner

MR AJ DESAI AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 25/01/2000

ORAL JUDGEMENT

#. Heard Mr.U.M.Shashtri, learned advocate for the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 10-5-1999 passed by

respondent No. 1 - The Commissioner of Police, Surat against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-C interalia indicates that in all 4 prohibition cases were registered against the petitioner at Kapodara police station on 13-1-97, 12-12-98, 14-12-98 and 12-2-99 respectively. That in each case, the country made liquor was seized from the possession of the petitioner / detenu and all the cases are pending for trial in the Court.

#. Over and above two witnesses on assurance of anonymity have given information regarding the bootlegging activities of the petitioner vide statements dated 9-3-99 and 20-4-99 respectively, wherein, the the said witnesses have narrated the incidents dated 8-2-99 and 16-2-99 respectively. That on the basis of the said material, the respondent No. 1 - The Commissioner of Police, Surat as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind. That last criminal case against the petitioner has been registered on 12-2-99 which is made the basis the order and yet the impugned order of detention has been passed on 10-5-1999 without explaining inordinate delay in taking the impugned action.

#. In the matter of PRADEEP NILKANTH PATURKER VS. STATE OF MAHARASTHRA reported in AIR 1994 SC 656, the Hon'ble Supreme Court has observed that delay in taking action under detention law is fatal to the validity of the detention order. The Hon'ble Supreme Court has observed that inordinate delay if unexplained in taking action, would vitiate the subjective satisfaction on account of snapping of casual connection between the anti

social activities and impugned order of action. Even this Court also in the matter of ELESH PATEL VS. THE COMMISSIONER OF POLICE, AHMEDABAD reported in 1997 (1) GLH 381 has also followed the said proposition by referring the various authorities of Hon'ble Supreme Court and has held that in the absence of reasonably explanation for delayed action, the detention order cannot be sustained.

#. That in the instant case, on scrutiny of grounds of detention, it appears that the petitioner was released on bail on 12-2-1999 and thereafter, statement of anonymous witnesses have been recorded on 9-3-1999 and 20-4-99. That the said witnesses have referred to the alleged anti social activities of the petitioner in respect to February, 99. That thereafter, there is no material stated in the grounds of detention showing repetition or continuation of anti social activities of the petitioner. Thus, there is no explanation much less a reasonable explanation for delayed action taken on 10-5-99 by passing the impugned order against the petitioner and as such, it is difficult to uphold the said order.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 10-5-99 passed by respondent No. 1 - The Commissioner of Police, Surat against the petitioner is hereby quashed and set aside. The petitioner - SHARAD ANAND SHAHU is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 25-1-2000 [A.K.Trivedi, J.]

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